IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 313 OF 2007
IN
CRIMINAL WRIT PETITION No. 310 OF 2007

Office Notes, Office Memorandum of Coram appearances, Court's orders or directions and Registrar's orders :	:	Court's or Judge's orders

Mr. Milind Sathe i/b M/s. Madekar & Co. for the applicant.

Mr. U. V. Kejariwal, APP for respondent No.2 & 3.

Ms. K. Thakal, advocate for respondent No.1.

CORAM : R.M.S. KHANDEPARKAR
AND
Mrs. V.K. TAHILRAMANI, JJ.

DATE : OCTOBER 18, 2007.

P.C.

. Heard. the learned counsel for the applicant. Ms. K. Thakal, learned advocate appearing for the respondent No.1 states that she has no instructions in the matter though she has placed on record affidavit in reply. Considering the facts disclosed from record, it is apparent that though the agreement for sale between the parties was executed in the

year 1994, the entire consideration amount has not been paid by the respondent No.1 till this day. Out of the total consideration agreed upon, only sum of Rs. 2 lakhs and odd amount was paid. The record nowhere discloses that any step having been taken by the proposed purchaser for completion of the terms of the agreement and payment of the entire consideration amount. In the circumstances, we do not find that respondent was justified in submitting that the property could be subjected to attachment in the proceedings and the rights of the lawful owner in respect of the property can be jeopardised or curtailed in any manner. It has been sought to be contended by the respondent in the affidavit that possession of the property was taken over on execution of the agreement and on payment of the earnest money. The fact remains that the record of right discloses the possession of the property to have continued with the applicant and further no steps were ever been taken by the proposed purchaser to complete the obligations under the agreement till this date. In the circumstances, prima-facie case

being made out, the application filed by the applicant is well deserved to be allowed as prayed for. Denial of the relief in that regard is bound to result in irreparable loss to the applicant. Considering the fact that there is an admission on the part of the respondent that only amount of Rs. 2 lakhs and odd were paid and rest of the amount has not been paid till date, as per the terms of the agreement, balance of convenience lies in favour of applicant. Hence, application is allowed in terms of prayer Clause (a), and stands disposed of accordingly.

2. The amount in terms of the order shall be deposited in this Court.

Sd/-
[R.M.S. KHANDEPARKAR, J.]

Sd/-
[Smt. V. K. TAHILRAMANI,J.]